SPONSOR: Sen. Walsh & Rep. Dorsey Walker & Rep. Kowalko & Rep. Osienski & Rep. K. Williams
Sens. Cloutier, Hansen, Poore, Sturgeon; Reps. Bennett, Brady, Chukwuocha, Jaques, Lynn, Matthews, Seigfried, Viola

DELAWARE STATE SENATE
150th GENERAL ASSEMBLY

SENATE SUBSTITUTE NO. 1
FOR
SENATE BILL NO. 48
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO PUBLIC WORKS CONTRACTING.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 6902, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating Delaware Code provisions and internal references accordingly:

§ 6902. Definitions.

As used in this chapter:

( ) "Craft training" means an apprenticeship program approved by and registered with any State apprenticeship agency or the United States Department of Labor. The Secretary of the Department of Labor shall maintain a list of crafts for which there are approved and registered training programs.

(13) "Labor supply ratio" means the number of skilled crafts persons per unskilled workers employed on a public works project. Any person who has completed a federal apprenticeship program, an apprenticeship program approved by the Delaware Department of Labor ~~pursuant to~~ under Chapter 2 of ~~Title 19~~ Title 19, or has otherwise documented 8 years of experience in a particular craft, ~~shall be~~ is deemed to be a skilled crafts person for the purposes of this definition.

Section 2. Amend § 6962, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6962. Large public works contract procedures.

(c) *Bidder prequalification requirements. —*

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(13)a. If there is a craft training program for a craft in the project, a contractor must commit to provide craft training for journeyman and apprentice levels at the time the contractor executes the public works contract if all of the following apply:

1. A project meets the prevailing wage requirement under § 6960 of this title.

2. The contractor employs 10 or more total employees.

3. The project is not a federal highway project, except for the project under paragraph (c)(11) of this section.

b. If there is a craft training program for a craft in the project, a contractor must commit that all subcontractors must provide craft training for journeyman and apprentice levels at the time the contractor executes the public works contract if all of the following apply:

1. A project meets the prevailing wage requirement under § 6960 of this title.

2. The subcontractor employs 10 or more total employees.

3. The project is not a federal highway project, except for the project under paragraph (c)(11) of this section.

c. The craft training required under paragraphs (c)(13)a. and (c)(13)b. of this section may be provided by any of the following:

1. The contractor.

2. The subcontractor.

3. A program registered under § 1101-4.0 of Title 19 of the Delaware Administrative Code.

d. The Secretary of the Department of Labor may promulgate and adopt regulations to implement this paragraph (c)(13) of this section.

(d) *Bid specifications and plans requirements. —*

(13) *Bid evaluation, contract award and execution procedure*. —

i. *Craft training requirement. ---*

1. A public works contract must include a requirement that the contractor provide craft training for journeyman and apprentice levels if all of the following apply:

A. A project meets the prevailing wage requirement under § 6960 of this title.

B. The contractor employs 10 or more total employees.

C. The project is not a federal highway project, except for the project under paragraph (c)(11) of this section.

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2. A public works contract must include a requirement that a subcontractor provide craft training for journeyman and apprentice levels if all of the following apply:

A. A project meets the prevailing wage requirement under § 6960 of this title.

B. The subcontractor employs 10 or more total employees.

C. The project is not a federal highway project, except for the project under paragraph (c)(11) of this section.

3. The craft training required under paragraphs (d)(13)i.1. and (d)(13)i.2. of this section may be provided by any of the following:

A. The contractor.

B. The subcontractor.

C. A program registered under § 1101-4.0 of Title 19 of the Delaware Administrative Code.

(14)a. *Suspension and debarment*. —

1. Any contractor who fails to perform a public works contract or complete a public works project within the time schedule established by the agency in the invitation to bid, may be subject to suspension or debarment for 1 or more of the following reasons:

~~a.~~ A. Failure to supply the adequate labor supply ratio for the ~~project;~~ project.

~~b.~~ B. Inadequate financial ~~resources; or~~ resources.

~~c.~~ C. Poor performance on the project.

D. Failure to provide required craft training under paragraph (d)(13)i. of this section.

2. Any subcontractor who fails to provide required craft training under paragraph (d)(13)i. of this section may be subject to suspension or debarment.

b. ~~Upon such failure for any of the above stated reasons,~~ If a contractor fails to perform a public works contract or complete a public works project under paragraph (d)(14)a. of this section or a subcontractor fails to provide required craft training under paragraph (d)(13)i. of this section, the agency that contracted for the public works project may petition the Director of the Office of Management and Budget for suspension or debarment of the contractor. The agency shall send a copy of the petition to the contractor within 3 working days of filing with the Director. If the Director concludes that the petition has merit, the Director shall schedule and hold a hearing to determine whether to suspend the contractor, debar the contractor or deny the petition. The agency shall have the burden of proving, by a preponderance of the evidence, that either the subcontractor failed to provide required craft training under paragraph (d)(13)i. of this section or the contractor failed to perform or complete the public

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works project within the time schedule established by the agency ~~and failed~~ by failing to do so for 1 or more of the following reasons:

~~a.~~ 1. Failure to supply the adequate labor supply ratio for the ~~project;~~ project.

~~b.~~ 2. Inadequate financial ~~resources; or~~ resources.

~~c.~~ 3. Poor performance on the project.

4. Failure to provide required craft training under paragraph (d)(13)i. of this section.

c. 1. Upon a finding in favor of the agency under paragraph (d)(14)b. of this section because a contractor failed to perform a public works contract or complete a public works project, the Director may suspend a contractor from bidding on any project funded, in whole or in part, with public funds for up to 1 year for a first offense, up to 3 years for a second offense and permanently debar the contractor for a third offense. ~~The Director shall issue a written decision and shall send a copy to the contractor and the agency. Such decision may be appealed to the Superior Court within 30 days for a review on the record.~~

2. Notwithstanding the penalties under paragraph (d)(14)c.1, of this section, upon a finding in favor of the agency that a contractor or subcontractor failed to perform the requirements under paragraph (d)(13)i. of this section, the Director shall suspend a contractor or subcontractor who fails to perform the requirements under paragraph (d)(13)i. of this section and shall debar the contractor or subcontractor from bidding on any project funded, in whole or in part, with public funds for up to 5 years.

d. The Director shall issue a written decision and shall send a copy to the contractor and the agency. Such decision may be appealed to the Superior Court within 30 days for a review on the record.

Section 3. This Act is effective upon enactment and is to be implemented the earlier of the following:

(1) 1 year from the date of the Act's enactment.

(2) Upon promulgation of final regulations under this Act and the Secretary of the Department of Labor's notice to the Registrar of Regulations, published in the Register of Regulations, that the contingency under this paragraph (2) of this section has been fulfilled.